

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, ABBOTT MOLECULAR INC., and
ABBOTT LABORATORIES INC.,

No. C 05-03955 MHP

Plaintiffs,

v.

DAKO NORTH AMERICA, INC. and DAKO A/S,
Defendants.

ORDER

**Re: Motion to Certify for Appeal
Pursuant to 28 U.S.C. § 1292(b) and
Stay Proceedings**

On October 11, 2006, plaintiffs The Regents of the University of California, Abbott Molecular Inc. and Abbott Laboratories Inc. filed a motion to certify for immediate appeal to the Federal Circuit this court's July 31, 2006 summary judgment order. Specifically, plaintiffs seek review of the determination that plaintiffs' '479 patent was not infringed by the accused products and that prosecution history estoppel barred claims of infringement of plaintiffs' '841 patent by two of the twenty-two accused products. Plaintiffs will seek to consolidate review of the summary judgment order with review of this court's prior preliminary injunction order, which plaintiffs previously appealed and is currently pending before the Federal Circuit. Defendants have filed a statement of non-opposition to plaintiffs' motion to certify for appeal.

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1 Because the summary judgment order raises a controlling question of law on which there are
2 substantial grounds for difference of opinion, and because an immediate appeal may materially
3 advance the ultimate termination of the litigation, the court GRANTS plaintiffs' motion to certify for
4 appeal pursuant to 28 U.S.C. section 1292(b). All further proceedings in this action are STAYED
5 until further notice.

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7 IT IS SO ORDERED.

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9 Dated: 12/13/06



MARILYN HALL PATEL
District Judge
United States District Court
Northern District of California